



**FILED**

04-23-10

04:59 PM

## **ATTACHMENT A**

## GREAT OAKS GROUNDWATER ACCOUNT

### GREAT OAKS GROUNDWATER ACCOUNT CHARGES THROUGH 4/30/2010

REPORTING PERIOD	DUE DATE	STATEMENT NUMBER	ACRE-FEET USAGE	ORIGINAL AMOUNT DUE	DELINQUENT PENALTY 10%	INTEREST ACCRUED THROUGH 4/30/2010	AMOUNT NOW DUE
3/09 W-2	4/30/09	GM008989	120.83	\$ 60,777.32		\$ 7,293.24	\$ 68,070.56
3/09 W-5	4/30/09	GM008990	597.10	\$ 158,985.97		\$ 19,078.32	\$ 178,064.29
4/09 W-2	6/1/09	GM009037	464.28	\$ 233,711.98		\$ 25,708.32	\$ 259,420.30
4/09 W-5	6/1/09	GM009038	570.58	\$ 152,041.95		\$ 16,724.62	\$ 168,766.57
5/09 W-2	6/30/09	GM009085	673.25	\$ 336,802.64		\$ 33,680.30	\$ 370,482.94
5/09 W-5	6/30/09	GM009086	585.62	\$ 155,110.34		\$ 15,511.00	\$ 170,621.34
6/09 W-2	7/31/09	GM009132	741.00	\$ 368,568.56		\$ 33,171.21	\$ 401,739.77
6/09 W-5	7/31/09	GM009133	576.78	\$ 151,919.35		\$ 13,672.71	\$ 165,592.06
7/09 W-2	8/31/09	GM009178	920.33	\$ 460,732.60		\$ 36,858.64	\$ 497,591.24
7/09 W-5	8/31/09	GM009179	572.12	\$ 151,638.25		\$ 12,131.04	\$ 163,769.29
8/09 W-2	9/30/09	GM009224	886.00	\$ 446,576.69		\$ 31,260.39	\$ 477,837.08
8/09 W-5	9/30/09	GM009225	593.71	\$ 158,405.28		\$ 11,088.35	\$ 169,493.63
9/09 W-2	11/2/09	GM009271	694.67	\$ 352,764.57		\$ 21,165.90	\$ 373,930.47
9/09 W-5	11/2/09	GM009272	541.84	\$ 145,617.07		\$ 8,737.02	\$ 154,354.09
10/09 W-2	11/30/09	GM009318	391.89	\$ 202,478.74	\$ 20,247.87	\$ 10,123.95	\$ 232,850.56
10/09 W-5	11/30/09	GM009319	558.03	\$ 152,506.97	\$ 15,250.70	\$ 7,625.35	\$ 175,383.02
11/09 W-2	12/31/09	GM009366	314.40	\$ 163,477.93	\$ 16,347.79	\$ 6,539.12	\$ 186,364.84
11/09 W-5	12/31/09	GM009367	486.89	\$ 133,887.00	\$ 13,388.70	\$ 5,355.48	\$ 152,631.18
12/09 W-2	2/1/10	GM009413	84.38	\$ 43,877.60		\$ 1,316.34	\$ 45,193.94
12/09 W-5	2/1/10	GM009414	576.79	\$ 158,614.67		\$ 4,758.45	\$ 163,373.12
01/10 W-2	3/1/10	GM009460	35.48	\$ 18,449.60		\$ 369.00	\$ 18,818.60
01/10 W-5	3/1/10	GM009461	572.05	\$ 157,313.75		\$ 3,146.28	\$ 160,460.03
02/10 W-2	4/1/10	GM009507	22.23	\$ 11,559.60		\$ 115.60	\$ 11,675.20
02/10 W-5	4/1/10	GM009508	526.78	\$ 144,864.50		\$ 1,448.65	\$ 146,313.15
03/10 W-2	4/30/10	GM009554	103.84	\$ 53,996.80			\$ 53,996.80
03/10 W-5	4/30/10	GM009555	576.67	\$ 158,584.25			\$ 158,584.25
<b>TOTALS</b>				<b>\$ 4,733,263.98</b>	<b>\$ 65,235.06</b>	<b>\$ 326,879.28</b>	<b>\$ 5,125,378.32</b>

## INFORMATION FOR USE IN PREPARING THIS WATER PRODUCTION STATEMENT

The owner or operator of a water-producing facility is responsible for filing the water production statement and paying the resultant charges. If no water was produced during the STATEMENT PERIOD shown, you are still required to file a water production statement. Write "No Production" on the statement, sign and return it by the due date.

### REQUIREMENTS OF STATE LAW

- ① \* Should any owner or operator of a water-producing facility fail to file the water production statement by the due date, the District must assess a penalty charge against the owner or operator in the amount of ten percent (10%) of the amount found due by the District.

An owner or operator who is assessed a penalty charge may petition the District in writing for reduction or waiver thereof, specifying the excusable or justifiable circumstances grounding his petition. To be considered, said petition must be received by the Clerk of the Board within 15 days of the receipt by the petitioner of notice of the assessment.

- ② \* If any owner or operator of a water-producing facility shall fail to pay the groundwater charge by the due date, the District must charge interest at the rate of one percent (1%) each month or portion of a month the payment is past due. *There is no provision under State law whereby the interest charge can be waived.*

3. If the District has probable cause to believe that the production of water from any water-producing facility is in excess of the amount disclosed on the sworn statement filed, or if no statement is filed for such facility, the District may fix the amount of water production at an amount not to exceed the maximum production for such facility.

### DEFINITIONS

- ① \* "Completed statement" means a statement filed with the District which has used the correct reporting method, all necessary worksheets relating to the method of calculation and qualifying for the agricultural rate have been completed and are attached, and the statement has been signed under the penalty of perjury by the owner or his authorized representative.

- ② \* "Due date" means the date the statement must be filed with the District or postmarked on or before midnight of that date. The due date is imprinted on the statement.

3. "Agricultural water" means water primarily used in the commercial production of agricultural crops or livestock.

4. "Non-agricultural water" means all water that does not qualify as agricultural water.

- ⑤ \* "Agricultural rate" means the rate to be used if the production meets the requirements of agricultural water. Worksheet B must be completed and filed if you claim the agricultural rate. Agricultural usage should be reported on the June and December statements only.

- 6 "Permanent abandonment" means that a well has been properly sealed in accordance with District Ordinance 90-1.

### WATER METER READINGS AND CONVERSION TO ACRE-FEET

Enter your current water meter reading in the column END WATER METER READING exactly as the meter reads, being certain to place the decimal point correctly. If not already pre-printed for you, enter the ending water meter reading from your last water production statement in the column BEGIN WATER METER READING. Subtract the BEGIN reading from the END reading to arrive at the remainder.

If your meter reads in acre-feet, the remainder is the metered production on the water meter.

If your meter reads in gallons, multiply the remainder by the multiplier shown and divide the results by 325,850 to determine acre feet.

If your meter reads in cubic feet, multiply the remainder by the multiplier shown and divide the results by 43,560 to determine acre feet.

On the last page of the water production statement, enter the Metered Water Production and the Unmetered Water Production by type of water usage to determine Total Water Production. Please round Total Water Production to two decimal places before multiplying by the appropriate rate to determine the charges due.

**From:** Lonnie Spin  
**To:** Barrera, Linda;  
**cc:** PublicRecords;  
**Subject:** RE: Public Records Act Request re Great Oaks Water Company  
**Date:** Wednesday, April 21, 2010 9:09:32 AM  
**Attachments:** Scan4923.pdf  
GreatOaksAcct.xlsx

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Linda,

In response to your public records request item 1- "any and all documents that show the total amount of interest charges imposed on GOWC for non-payment of groundwater production charges between March 2009 and April 2010," please see the attached spreadsheet.

Also included in this spreadsheet are penalty fees for a late production statement, and the discussion below concerning them.

This completes our response to your request.

Thank you,

Lonnie Spin  
Records & Library Unit Manager  
Santa Clara Valley Water District  
Tel: 408-265-2607 ext. 2947  
Records Management Hotline ext. 2360

**From:** Laurie Keele  
**Sent:** Tuesday, April 20, 2010 4:31 PM  
**To:** Joseph Atmore  
**Subject:** FW: Penalties for late filing & AG worksheet for Nakashima

Joe,

Here is my last correspondence with Vicky at Great Oaks. Attached are:

1. The filing requirements (as sent to Great Oaks) which are on the back of every statement outlining late penalties
2. Great Oaks Groundwater Account (charges through 4/30)

LK

**From:** Laurie Keele  
**Sent:** 2010-04-15 1:18 PM  
**To:** 'vmorse@greatoakswater.com'  
**Cc:** Joseph Atmore  
**Subject:** RE: Penalties for late filing & AG worksheet for Nakashima

Hi Vicki,

Agricultural Worksheet B was, once again, not submitted with your March Groundwater Production Statements. Please provide the usage details as soon as possible. The filing of Agricultural Worksheet B is a requirement to be considered a "completed statement" per the "DEFINITIONS" listed on the back of Monthly Groundwater Statements (see attachment). This is particularly true when filing for more than one crop or user.

Please see the responses to your concerns below; they are marked in red.

Respectfully,  
Laurie

**From:** Vicki Morse [mailto:vmorse@greatoakswater.com]  
**Sent:** 2010-04-14 3:38 PM  
**To:** vmorse@greatoakswater.com; Laurie Keele  
**Subject:** RE: Penalties for late filing

I received the mailed information. The 1/12/10 emails clearly show that I had mailed the reports timely and would scan and email the signed copies I had, which I did. They were obviously lost in the mail. We should not be held accountable for mail lost. Upon review of these two instances of late filing, management has determined that the penalties apply.

Additionally, the held report waiting for the AG response from Ms. Nakashima, when you had not notified me you had the report and approved agricultural application should also not be penalized. I am in receipt of Ms. Nakashima's agricultural application. Their Agricultural Worksheet B (for their October production) was never submitted; yet I audited their production as Agricultural usage in good faith. You then responded to not let that hold me up again, and it has not.

I still stand on the request to abate the penalties.

Regards,  
~Vicki

*Vicki Morse*, CPA, CFO  
Great Oaks Water Company



Phone: 408.227.9540 X14  
Fax: 408.227.7126

Office Address:  
20 Great Oaks Blvd, Ste 120  
San Jose, CA 95119

Mailing address:  
PO Box 23490  
San Jose, CA 95153-3490

-----Original Message-----

**From:** Vicki Morse [mailto:vmorse@greatoakswater.com]  
**Sent:** Friday, April 09, 2010 5:17 PM  
**To:** Laurie Keele  
**Subject:** Penalties for late filing

You are assessing penalties for late filing of the reports for October and November of 2009. I have signed copies that show I mailed them to you timely. Are we penalized for mail problems – either late delivery or non-delivery? How can that be right or fair? Can you please send me proof of late filing that was our doing? I remember one you didn't receive, I had signed copies that showed I mailed it. Then you sent me new forms, and I sent them back to you, when the originals had obviously been lost in the mail – I think that was November's due in December. These penalties are exorbitant and I don't believe they are accurate. You know I send them regularly and timely, even though the current lawsuit precludes sending the payments per advice of legal representatives. If you need copies with my signature and date, I'd be glad to scan them and send them to you.

Please advise and abate all penalties.

Regards,

*Vicki Morse*, CPA, CFO

## Great Oaks Water Company



GREAT OAKS WATER COMPANY

Phone: 408.227.9540 X14

Fax: 408.227.7126

### Office Address:

20 Great Oaks Blvd, Ste 120

San Jose, CA 95119

### Mailing address:

PO Box 23490

San Jose, CA 95153-3490

**From:** Debra Cauble  
**Sent:** Wednesday, June 17, 2009 9:07 AM  
**To:** 'Tim Guster'  
**Subject:** Overdue payment of groundwater charges due from Great Oaks

Tim,

Our finance people advise me that your client continues to be delinquent on payment of current groundwater charges. As I've advised, per state law interest is accruing. Given that you have no dispositive judicial ruling exempting your client from payment of the groundwater production charges, I once again request that you advise your client to make payment.

Obviously, making payment of current sums due is not a waiver of your client's legal position.

I note that Great Oaks has recently filed an advice letter with the PUC, requesting authority for consumer charges that are based in part on expenses related to payment of groundwater production charges. I question the legal basis for Great Oaks to charge its customers to obtain revenues needed to make payments it is not making to the District.

Debbie

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Debra L. Cauble  
District Counsel  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118-3614  
tel: 408.265.2607 x 2755  
fax: 408.979.5649  
[dcauble@valleywater.org](mailto:dcauble@valleywater.org)

## **ATTACHMENT B**

**From:** Lonnie Spin  
**To:** Barrera, Linda;  
**cc:** Roberta Stewart; Emily Cote;  
**Subject:** request for public records of April 19, 2010 regarding Great Oaks Water Company  
**Date:** Tuesday, April 20, 2010 2:57:31 PM  
**Attachments:** 23327.pdf

In response to item 2 of your request dated April 19, 2010 for ""any and all documents that convey whether GOWC requested that the District accept payment of the disputed groundwater production charges into a trust account pending the outcome of the litigation. If the District is unable to provide these documents, please indicate whether these documents do not exist or whether GOWC request was made during settlement discussions that were subject to a confidentiality agreement between the parties in the pending litigation," we have reviewed our files and found as follows:

1. Attached are email exchanges between Tim Guster and Debbie Cauble responsive to this request.

2. 4 responsive emails are exempt from release and cannot be produced because they were identified as transmitted pursuant to Confidential Settlement Discussions. They are as follows:

3 emails from Tim Guster to Debra Cauble dated:

May 07, 2009 1:49 PM

June 17, 2009 9:47 AM

June 30, 2009 10:57 AM

1 email from Debra Cauble to Tim Guster dated June 30, 2009 10:03 AM.

This completes our response to item 2 of your request.

Regards,

Lonnie Spin  
Records & Library Unit Manager  
Santa Clara Valley Water District  
Tel: 408-265-2607 ext. 2947  
Records Management Hotline ext. 2360

## Emily Cote

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**From:** Tim Guster [tguster@greatoakswater.com]  
**Sent:** Monday, May 04, 2009 11:34 AM  
**To:** Debra Cauble  
**Cc:** Emily Cote; Matthews, Philip R.  
**Subject:** Re: Request re funds paid by GO to SCVWD

Debbie,

If you want the matter escalated to additional legal proceedings, something I thought both sides were trying to avoid, simply say the word. It was my impression we were trying to work things out. Obviously my efforts to establish a working relationship with you have been less than successful. It was not helpful to respond to an email asking for clarity by misrepresenting what I said. If you can find where I said the Board would act arbitrarily or would refuse to pay a judgment, I will stand corrected. I simply stated the obvious: when making decisions, the Board may not see things your way and would not consider itself bound by general statements in one of your emails. There is nothing controversial or argumentative about that statement.

In my meeting with Emily I provided several suggestions on how to address issues going forward. At the end of the meeting I indicated that if further discussions are desired, it is up to the Water District to contact us. If you or Emily or Phil have any constructive ideas, perhaps now would be the time to offer them. If you have none, please have the courtesy of telling us that too.

Tim

---

Timothy S. Guster  
General Counsel  
Great Oaks Water Company  
PO Box 23490  
San Jose, California 95153  
[tguster@greatoakswater.com](mailto:tguster@greatoakswater.com)  
(408) 227-9540  
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----- Original Message -----

**From:** Debra Cauble  
**To:** 'Tim Guster'  
**Cc:** 'Matthews, Philip R.'; Emily Cote  
**Sent:** Thursday, April 30, 2009 3:27 PM  
**Subject:** RE: Request re funds paid by GO to SCVWD

Tim,

Your intimation that our Board of Directors would arbitrarily refuse to pay a valid final money judgment obtained by your client, or any party, against the District is unfounded and I do not think it is productive to discuss an agreement built on such a premise. If you believe there is a legal basis, rather than a political basis, for what you are seeking, then I suggest it would be best to discuss it on May 7 together with all of the other issues the parties may wish to go over at that time.

I expect that your client will continue to pay its groundwater production charges in the meantime.

Debbie

---

Debra L. Cauble  
District Counsel  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118-3614  
tel: 408.265.2607 x 2755  
fax: 408.979.5649  
[dcauble@valleywater.org](mailto:dcauble@valleywater.org)

**From:** Tim Guster [<mailto:tguster@greatoakswater.com>]  
**Sent:** Thursday, April 30, 2009 8:20 AM  
**To:** Debra Cauble  
**Subject:** Re: Request re funds paid by GO to SCVWD

Debbie,

Thank you for your email.

Please give me a call to more fully explain. You're telling me the District will be able to pay a judgment, but given the statements made previously about the financial condition of the District and your trial attorney's comment that bankruptcy may be an option, I trust you understand my desire for clarity. Also, at this point, no matter how sincere your representations about paying a judgment, we both know that the Board of the Water District could see the issue quite differently and would not consider your statements to be binding upon them.

Since, as you said yesterday, you're plenty busy, may I suggest we take the time and make every effort to reach an agreement on this issue that protects both the District and Great Oaks (according to your availability to discuss the matter). This would mean that during our discussions Great Oaks will hold off on sending in the groundwater charge payment(s) until that agreement is reached. If you want to delegate the negotiation to trial counsel, I have no problem with that. In fact, it may be better to enter into a stipulation in the reverse validation case on the issue. That would alleviate some of our concerns and would most likely address some of your accounting concerns as well.

FYI, I am meeting with Emily at 4:30 this afternoon, after my visit to your library to review some of the CPRA production with Lonnie Spin (beginning at 3:00).

Tim

---

Timothy S. Guster  
General Counsel  
Great Oaks Water Company  
PO Box 23490  
San Jose, California 95153  
[tguster@greatoakswater.com](mailto:tguster@greatoakswater.com)  
(408) 227-9540  
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or use of information herein or attached is prohibited.

----- Original Message -----

**From:** [Debra Cauble](mailto:Debra Cauble)  
**To:** 'Tim Guster'  
**Cc:** [Emily Cote](mailto:Emily Cote)

**Sent:** Wednesday, April 29, 2009 4:58 PM

**Subject:** Request re funds paid by GO to SCVWD

Hi Tim,

I've just had a meeting with our Chief Financial Officer. After carefully reviewing your request, we do not see a way to address it consistent with our accounting practices and generally accepted accounting principles.

In the meantime, our CFO assures me that the District is in good financial health, and that should the court order the District to pay a judgment in favor of Great Oaks, our operating and reserve accounts are managed in such a fashion that we should be able to appropriately respond.

Debbie

---

Debra L. Cauble  
District Counsel  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118-3614  
tel: 408.265.2607 x 2755  
fax: 408.979.5649  
[dcauble@valleywater.org](mailto:dcauble@valleywater.org)

**ATTACHMENT C**

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Updated and Corrected Application of GREAT OAKS WATER CO. (U162W) for an Order Authorizing an Increase in Rates Charged for Water Service, increasing the revenue requirement by \$1,846,100 or 14.94% in 2010, by \$254,425 or 1.79% in 2011, and by \$165,822 or 1.14% in 2012.

A.09-09-001  
(Filed September 3, 2009)

**DECLARATION OF JOSEPH ATMORE**

I, Joseph Atmore, declare as follows:

1. I am a Finance Officer for the Santa Clara Valley Water District (District). One of my duties is to oversee the collection of money due to the District. This includes collection of groundwater production charges which are imposed by the District upon well owners, pursuant to the provisions of our enabling legislation, commonly referred to as the District Act.
2. Well owners such as Great Oaks are mailed Groundwater Production Statements/Invoices on the 15<sup>th</sup> of each month. The charges are calculated based upon the volume determined from meter reads. Great Oaks Water Company has not paid groundwater production charges to the District since April 30, 2009 (March 2009 production).
3. The District has never been near a state of insolvency in total or for the two operating units (Watershed/Water Utility). During the Fiscal Year ending June 2009, the Water Utility Enterprise had net assets of \$639M including cash reserves in excess of \$100M. All financial information is audited yearly by external auditors and no "findings" of fiscal peril have been issued regarding the finances of the Water Utility

Enterprise or the District as a whole.

4. In the District was unable to impose and collect groundwater charges, though a substantial reduction in revenue would result, by balancing the District's reserves and the adjustment of capital expenditures, the impact could be mitigated. Loss of those revenues would not result in insolvency for the District.

5. Both long-term and short-term financial forecasts indicate that no insolvency is near in the short or long-term.

6. As part of on-going vigilance from the credit rating agencies (Standard and Poor's, Moodys, Fitch) relative to the District's outstanding bonds, the District's financial position is evaluated on a yearly basis. After an extensive analysis of the District's finances – and with the full and complete disclosure by the District of this lawsuit and the risks associated with losing the case - Standard and Poor's, in September of 2009, reaffirmed the District's high ratings of Aa2 for the Water Utility Bond issues. This third party analysis of the District attests to the strength of the finances for the Water Utility Enterprise.

7. June 17, 2009, after discussion with District Counsel, an email was sent to Mr. Guster regarding GOWC's failure to pay and notifying him that interest charges were accruing on a monthly basis. To date, no payment has been received from GOWC.

8. The District does not set up trust accounts for payments owed and has denied the request from other firms to do so.

9. The District declined to accept payment for groundwater charges to be held in trust because it raised a number of practical and accounting issues without providing any identifiable protective benefits. The District as a governmental entity is subject to very

specific requirements about how it must invest its money, and the District is required to comply with various directives in order to remain in compliance with its bond covenants. These requirements might have been compromised by the suggested payment in trust. The amount of time and effort it would have taken to work out such issues appeared to be considerable so it was deemed not to be something the District could prudently agree to.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 20<sup>th</sup> day of April, 2010, in San Jose, California.



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Joseph Atmore